Final Opinion of State Supreme Court

IN CHURCH CASE

The Church of God Victorious

Opinion of The Supreme Court

Delievered July 15, 1927, Filed 7-16-27.

The Church of God et al

vs.

A. J. Tomlinson et al

Bradley Equity.

Do the complainants or the defendants and cross complainants represent the true Church of God? Each undertakes to enjoin the other from interfering in the management and control of the church and its property. Each charges that the other has departed from the "faith and practice" of the church as originally established.

The controversy relates alone to the government of the Church, and incidentally to the management and control of the Church property, valued at $150,000.00.

No question of creed, doctrine or scriptural interpretation is involved. In so far as "the faith once delivered to the saints" is concerned all parties seem to be of one mind and one accord.

The Church of God is a voluntary religious association, with a membership in excess of twenty thousand scattered over the United States and the Bahama Islands.

Its beginning dates back to 1886. It was reorganized about 1902, with a small membership, but since that time its growth and expansion has been rapid. P ior to 1921 it had neither constitution, articles of agreement or by-laws.

Beginning in 1906 it had an annual assembly of its ministers and lay members. Due notices of these meetings were given and all ministers and lay members were invited to attend and participate. This body, consisting of the entire Church, was denominated "The General Assembly." At those meetings they interpreted the scriptures, adopted resolutions pertaining to the church government, and prescribed rules of practice for its members.

Beginning with 1903, and down to 1923 the defendant, A. J. Tomlinson was the dominating and controlling factor in the annual assembly and was its highest officer, and whatever he suggested or recommended was usually agreed to by the assembly.

Their method of taking action was of a negative character For example, if a resolution was introduced, after due consideration, if it met with no opposition, an entry was made on the minutes showing that it was "adopted unanimously." But if one member opposed it it was not adopted. Everything was done by unanimous consent.

The following recital from the minutes of 1920 is contained in the minutes of other sessions of the assembly, to-wit:

"In these meetings matters should be discussed with love, humility and meekness. No votes should be taken to decide questions. Everything should be done with one accord and questions settled by mutual agreement. If there is division on a matter hold it over until all can agree. If one should seem obstinate and contrary, don't run the matter over him, but take up his case and investigate the cause for his obstinacy, and if he shows the spirit so that he should be heard, then show him courtesy. But if he proves to be wrong, then deal with him as the Bible directs. After this is all done take up the original subject and dispose of it in harmony and love."

In 1904 the headquarters of the church was established in Cleveland, Tennessee, with Tomlinson in charge. Subsequently, a large tabernacle was constructed in Cleveland, in which to hold the annual sessions of the General Assembly.

This controversy results from the fact that in 1923 the General Assembly deposed Tomlinson from office for misappropriation of funds belonging to the church, and he was also expelled from the local church at Cleveland, which he had founded. He was cited for trial but did not appear. Several of his associates were removed from office and expelled from the church at the same time.

Thereupon, Tomlinson and his associates, while acquiescing in the right of complainants to manage and control the church property, under claim that they represented the true Church of God, began writing letters to that effect, collecting money from the members, and brought about a condition of confusion and diversion of funds that necessitated the filing of the original bill herein.

Both the ministry and laity that had supported Tomlinson loyally for so many years, after full investigation and ample opportunity given him to explain his conduct, concluded that he had betrayed his trust, and was no longer entitled to their confidence and fellowship.

Their conclusion in the matter is final and not subject to review by the courts.

Tomlinson is not seeking any relief himself; in fact, he is in no position to do so, but he procured a number of individual members of the Church of God to file a cross bill, charging that complainants had departed from the faith and do not represent the true Church of God, etc.

The Court of Appeals so held, upon the ground that the adoption of a constitution by the General Assembly in 1921 was a departure from the "faith and practice" of the church.

The General Assembly is composed of all of the members of the church, and, with respect to this matter, Tomlinson and his followers are in no better situation than complainants. The constitution was adopted unanimously, and cross complainants neither charged in their pleadings nor testified on the trial that they had opposed the constitution, or took no part in its adoption. They do not specifically base their right to relief upon the mere fact that complainants favored the adoption of the constitution, and, so far as the record affirmatively shows, their situation is no different from that of the complainants.

The gravaman of the cross bill is that complainants left the true church and formed another church, a charge which is not supported by the evidence.

It is manifest that the adoption of the constitution had nothing whatever to do with the so-called split in the church. The deposing of Tomlinson was the sole cause of the division, and the alleged illegal adoption of the constitution was an after-thought. After the constitution was adopted it was acquiesced in by cross complainants for about two and a half years before they made any protest, and most likely they would never have interposed an objection but for the fact that they were induced to do so by Tomlinson, at whose instance the constitution

was adopted. Tomlinson was the General Overseer, the highest officer in the church.

We quote from the minutes of the 1921 General Assembly as follows:

"The General Overseer made a few remarks in which he mentioned a written constitution. Some of them are:

"The elders in council with General Overseer have concluded there is need of a constitution for the Church of God. Remember this is not setting forth any laws or creeds that are binding us. We are only setting forth that which we have been practicing for years.

"The General Overseer then read the constitution which was drawn up by the General Overseer and elders in council.

CONSTITUTION

PREAMBLE.

"We, the Church of God, the ministry and membership of the General Assembly of the Churches of God in conference assembled at Cleveland, Tenn.

"In order to form a more perfect union, establish the principles of Theocratic Government, set forth the teaching, principles and practices as heretofore interpreted by the General Assembly as furtner herein provided and for the general welfare of its membership; do ordain and establish this constitution for the General Assembly of the Churches of God.

ARTICLE 1.

PURPOSE OF ORGANIZATION.

"Section 1. This organization is and shall be known as the General Assembly of the Churches of God.

"Section 2. The object and purpose of this organization is to propagate the doctrine, principles and practices of the Church of God, as set forth in the New Testament, as interpreted by the legally authorized officials of this organization, which interpretation may be found in the minutes of the annual sessions of the General Assembly, also filed at the business headquarters of the Church of God.

"Section 3. The promulgate rules and regulations to govern the local churches of said organization, and otherwise promote the general interest of the General Assembly.

"Section 4. To search out the Bible plans of government and discipline and interpret the same.

"Section 5. To provide a general government in which is vested full power and authority to dictate and promulgate rules and regulations from time to time to govern the local churches composing said Assembly.

"Section 6. To provide a general convocation for the mutual fellowship, spiritual development and general welfare of its membership.

ARTICLE 2.

MEMBERSHIP.

"Section 1. The membership of the General Assembly is and shall be composed of all the local churches as recorded in the minutes of said Assemblies.

"Section 2. When a new church is set in order by any legally authorized minister of the Church of God, this new church, as a product of his labor, becomes a member of the General Assembly and shall be subject to the government, teachings, principles, and practices as promulgated from time to time by said General Assembly.

"Section 3. No local church shall withdraw from the General Assembly as a whole, but such individual members of said local church who may become disloyal or otherwise disorderly, shall be dealt with and excluded from membership in such local church.

ARTICLE 3.

GOVERNMENT.

"Section 1. The government of this organization is and shall be Theocrat-

ic in form, as interpreted by its officials.

ARTICLE 4.

OFFICERS.

"Section 1. The officers of the General Assembly of the Churches of God are and shall consist of General Overseer, general secretary, council of twelve elders and other seventy elders, presbytery, state overseers and trustees.

"Section 2. The duties of the General Overseer shall be the general supervision of all the work of the general Assembly and to sit as chairman of said Assembly when in session.

"Section 3. The duties of the general secretary shall be to keep a careful record of the General Assembly, and act in conjunction with the General Overseer in execution of any and all legal documents authorized by the General Assembly.

"Section 4. The duties and powers of the council of the twelve elders shall be to consider all questions that may properly come before them pertaining to the general interest and welfare of the Church of God. It is, and shall so be understood, that the twelve in conjunction with the General Overseer shall be the supreme council.

"Section 5. The duties of the seventy elders shall be to faithfully represent the government and teaching of the Church of God in their various fields of labor, and to sit in joint session with the twelve in the Assembly to make final decisions on all questions that shall come before said Assembly.

"Section 6. The twelve elders and the seventy elders shall together with the General Overseer be understood and so construed to be the official Assembly while in joint session, which shall have full power and authority to designate rules of government, teachings and principles for the local churches, those present to constitute a quorum.

"Section 7. The duties of the trustees of the General Assembly is and shall be to hold in trust all property belonging to the General Assembly for the full use and benefit of said Assembly, and to see that no property or part of the same shall be converted to any other use than that which is in harmony with the plan and purposes, government and teachings of said General Assembly.

"Section 8. The presbytery and their duties:

"The General Overseer and the state overseer shall constitute the presbytery in the respective states or provinces, who, after all investigations necessary and other proceedings provided and authorized by the General Assembly shall have full power and authority to license or ordain candidates for the ministry.

"It is further understood that it shall be within the power of the presbytery to take final action in revoking the license or ordination of any minister for any reason or cause satisfactory to themselves.

"Section 9. The duties of the state overseer is and shall be to have the oversight of his state or territory and as much as possible conduct or order a general evangelistic campaign over his state during the year. To see that every church is supplied with a pastor as much as lieth in his power. In short, oversee every interest of the work in his territory.

"Section 10. The term of all officials shall be fixed by the General Assembly while in session.

"Section 11. Any official is subject to impeachment for an offence rendering him unworthy of the position that he occupies.

ARTICLE 5.

JUDICIAL.

"Section 1. There shall be a judicial body composed of seven of the twelve elders who shall decide all matters which shall properly come be-

fore them, whose decision shall be final.

"Section 2. There shall be a judicial body who shall sit in the various states where churches are established, to consider all matters coming under their jurisdiction, said body shall be composed of the state overseer, one of the seventy elders, and one bishop.

"Section 3. It shall be the duty of the board designated in section 2 of this article to examine all candidates for the ministry, and, if found satisfactory, they shall refer them to the presbytery for license or ordination.

"Section 4. It shall be the duty of the board designated in section 3 of this article to try all ministers for any offence committed within the state where they shall convene; if, for any reason their decision should be unsatisfactory to either of the litigants, he shall have right to appeal to the body mentioned in section 1 of this article.

"Section 5. It is and shall be within the power of the local church to try its members for any offence contrary to the government, teaching, principles or practices of the Church of God. Their jurisdiction, however, is limited to lay members only.

"Section 6. No business conference or any act shall be legal unless presided over by a legally authorized moderator.

"Section 7. Any lay member of the local church who has been tried for any offense and convicted or excommunicated who, for any reason, may feel that he has been improperly or illegally dealt with, shall have the right to appeal from such decision to the body set forth in section 2 of this article. And if, for any reason, he may be dissatisfied with the decision of this body, he shall have right to appeal to the body set forth in section 1 of this article.

"Also if there be a litigation between two or more members of a local church, and if, for any reason, they be dissatisfied with the decision of the local church, they may have a right to appeal to the board set forth in section 2 of this article, and if, for any reason, they should be dissatisfied with the decision of the board set forth in section 2 they may have right to appeal to the board set forth in section 1 of this article.

ARTICLE 6.

FINANCE.

"'Section 1. It is and shall be recognized as an accepted principle, and a part of God's financial plan that all the membership shall pay tithes of their net earnings or income.

"Section 2. It is and shall be ordained that the tithes are for the support of the ministry only.

"Section 3. For the love of the gospel and the general welfare of the church it shall be the duty of the membership to make free-will offerings from time to time as the needs may require.

"Section 4. It shall be the duty of all persons intrusted with finance belonging to the Church of God for any purpose, as treasurer of said church, to deposit the same in a reliable bank to the credit of the Church of God.

"Section 5. The power to regulate and operate the financial system shall be vested in the supreme council.

ARTICLE 7.

EDUCATION.

"Section 1. A Bible Training School shall be maintained as long as advisable, for the education of our ministers and workers, which shall include the extension department of the Bible Training Correspondence Course and any other educational pursuits that the General Assembly may from time to time deem necessary.

ARTICLE 8.

AMENDMENTS.

"Section 1. As the work of this organization progresses, and the number of Churches increase, the General Assembly may create new and other

positions and fill them as needs may require.

"Section 2. This constitution may be amended by a unanimous agreement of the official Assembly in any regular session.

"After General Overseer read the constitution he asked the Assembly if they wanted it reread or if they wanted any explanation.

"Following the reading were a few questions, explanations, and deep consideration, after which T. A. Richard suggested that the Assembly accept the constitution as a whole.

"It was unanimously agreed to accept it.

"General Overseer said, 'In order to show our appreciation of His presence and it seeming good to us and the Holy Ghost, let us all kneel before the Lord and reverence Him.'

"All knelt and thanked the Lord.

"After prayer all stood and praised God while the orchestra was playing.

"The General Overseer exclaimed, "BEHOLD WHAT GOD H A T H WROUGHT!"

We wish to emphasize what Tomlinson said at the time, as to the object of this document; what the complainants now say, and what the General Assembly declared at its 1923 session, viz: "We are only setting forth that which we have been practicing for years."

It is well established that a usage engaged in for a long period binds those affected thereby, and it would be most inequitable to permit Tomlinson, who dominated the assembly, to induce its members to adopt this instrument, and then, after he has been deposed, to ask the court, through his confederates, to say that, by approving these governmental rules, they departed from the faith and forfeited their rights to any interest in the church or its property.

At the 1920 General Assembly the following declaration was adopted:

"Be it known to all people everywhere that we, the General Assembly of the Churches of God, now convened in business conference, at Headquarters in the city of Cleveland, Tenn., set forth the following declaration:

"First. That the minutes of all previous Assemblies are a true official record in substance and in fact as kept by the authorized clerks by said Assembly, and published by those fully and legally authorized to do so, and not the product or individual statements of A. J. Tomlinson, the General Overseer.

"Second. That the names of all the local churches recorded in various minutes including this one are the result of the faithful services of the ministers and representatives of the General Assembly and when thus received by the said representatives of the General Assembly, they then became and composed a part of the General Assembly. We, therefore, do not recognize the right of any local church to withdraw from the General Assembly as a whole, but those who prove disloyal to the Government and teachings as promulgated from time to time by the General Assembly or otherwise disorderly are to be dealt with in individual manner and excluded as a member of said church.

"Third. That all the ministers, whether general overseer, elders, bishops, deacons or evangelists have been and are construed legal representatives of the Church of God while in harmony with its government and teaching.

"Fourth. That the General Assembly of the Church of God is that organized body with full power and authority to designate the teaching, government, principles and practices of all the local churches composing said Assembly.

"Fifth. That the name of this church is the Church of God which is sometimes referred to as, with headquarters at Cleveland, Tenn., only with the purpose of distinguishing it from other churches calling themselves the Church of God, but that it is no part of its name.

"Sixth. That one of the first principles accepted in the earliest history of its organization was that we accept the whole Bible rightly divided, which is today one of its most sacred principles, therefore we meet together in annual conference to search the Scriptures and put them into practice. Our teachings and faith are the same as originally accepted in its original organization and all of the changes in government and management have been duly authorized by the General Assembly in its various annual sessions.

"This read and unanimously approved by the Fifteenth Annual Assembly of the Churches of God on the 8th day of November 1920.

A. J. Tomlinson, General Overseer.
E. J. Boehmer, Clerk."

As far back as 1910, when Tomlinson was General Overseer, the minutes recite the following:

"It was decided by the Assembly that the General Overseer appoint pastors for the different churches as they give consent to go, feel led of the Lord," etc.

In 1911 the General Assembly appointed an overseer for each state and defined his duties.

It was provided that a minister could be tried before a state overseer. We quote from the minutes of 1915:

"Q. Can a minister who has been tried for some offense before the state overseer appeal to the Assembly?

"A. In case one feels he has not had justice given him he can appeal to the General Overseer as the General Overseer stands for the Assembly when the Assembly is not in session."

We quote the following from the minutes of 1917:

"Q. Is it right for any one to have charge of a church who will not pay tithes and furthermore who opposes paying tithes? A. No. The Assembly stands for paying tithes, and any one who opposes is not loyal to the Church. Every minister has to say he agrees with the teachings of the Assembly before he is ordained."

We quote further from the minutes of 1913:

"Q. What must be done with a member who has the Holy Ghost and 'must have just a little bit of tobacco'? A. This question gave rise to considerable discussion and careful consideration of the tobacco subject. The sentiment of the Assembly was finally obtained and a decision made.

"All of our ministers and local churches are to refuse to accept any who use tobacco into the Church under any circumstances. Those who are already in the Church who use it are to be dealt with in love, given ample time, only a few weeks, and if they fail to abstain they are to be disfellowshipped. Q. Can any one belonging to a lodge or secret order be received into the Church of God? A. This question has been amply dealt with in the past and the answer is emphatically, No!

"Q. Can any one belonging to the United Coal Miners' Association be received into the Church of God? A. The question might cover labor unions of all kinds. This matter has been looked into and studied carefully from every viewpoint. The time will come when we cannot buy or sell unless we have the mark of the beast in hand or forehead. It is a matter of bread and butter, but we do not dare to compromise and be bound by an order to bestow a favor upon a member of such order in preference to a brother of the household of faith. The question has been answered before with a positive, No!"

These are but a few of the many matters passed upon by the General Assembly. The minutes are teaming with entries creating offices, appointing officers and prescribing their duties. They appointed trustees and elders, they established a publishing house, a Bible school, an orphanage, constructed a tabernacle, provided plans for financing the church and its various institutions.

As will be seen from the foregoing, they prescribed qualifications for members, ministers and officers, adopted rules for the conduct of the various churches; said for what offenses ministers and members should be tried and dismissed and by whom, and exercised a general supervision and control over the church and its institutions.

About the only difference found in the constitution that differs from their former practice is that the official Assembly, composed of the twelve and seventy elders and the General Overseer, was given power to prescribe rules and answer questions; these duties having theretofore been performed by the General Assembly. But these duties pertained alone to the Church in its governmental capacity, and the change was likely due to the fact that the church had grown to such proportions that the General Assembly, within a limited period, could not attend to all of these matters, in addition to its other duties.

Furthermore ,this instrument is not strictly a constitution in the sense that it contains the fundamental principles upon which the church is founded, which, concededly, is the Bible. It is more in the nature of a code of rules and regulations to govern its officers and members.

The idea which has prevailed in this church from the beginning is that it is founded upon and governed by the principles, rules and teachings contained in the Bible; that the General Assembly is judicial only and not legislative; that, at least in theory, every action taken by the General Assembly is but an interpretation of the Bible, and that what is embodied in the so-called constitution is nothing more than a compilation of interpretations given at previous sessions. In other words, the Bible is their constitution and the General Assembly the court of last resort that interprets and applies it to questions as they arise.

If the General Assembly, in adopting the constitution, went further than it had theretofore gone, what it did was in line and keeping with its previous actions, and was justified by custom and usage long acquiesced in by the members of the church.

Calling an instrument a constitution does not necessarily make it such, and by the adoption of the paper in question we find that it was not intended as a statement of the fundamental principles "of faith and practice" of the Church of God.

It would seem, however, that, under the authorities, the General Assembly was empowered to adopt a constitution.

In 23 R. C. L., 429, it is said:

"It is well settled that religious societies and churches may, by their governing bodies, adopt a constitution and prescribe rules and regulations for their own government and discipline, and such constitution, rules, and regulations will be obligatory on the members, congregations, and officers of such societies, and will be given affect by the civil courts so long as they are reasonable and not inconsistent with or repugnant to the laws of the land, and are conformable and subordinate to the charter of the society where incorporated."

We find it unnecessary to pass upon this question since the cross bill does not ask that this instrument be decreed invalid; neither do cross complainants show that they are affected by the instrument, or that they are in a position to question its validity.

But if it be conceded that this is, strictly speaking, a constitution, and that the General Assembly was without power to adopt it, nevertheless, in the circumstances, we would be unwilling to hold that those member who favored and supported it thereby departed from the faith and forfeited their interest in the church and its property, especially when they were induced to favor it by those who are now attacking it.

As heretofore stated, there is no question of faith, creed or doctrine

involved, and if the complainants, and those they represent, honestly exceeded their authority, it affords no basis for excommunication or forfeiture of interest in the church property.

Certainly, under the long usage established and acquiesced in by the members of the church, the General Assembly had power to create offices and appoint officers; such power is lodged in no other body; and the complainants, having been appointed to conduct the affairs of the church, are the proper parties to manage and control its institutions until the General Assembly appoints others to succeed them.

The chancellor very properly referred to the master the taking and stating of an account between Tomlinson and the church.

For the reasons stated herein, the decree of the Court of Appeals will be reversed and that of the chancellor affirmed in its entirety.

All accrued costs will be taxed against the defendants to the original bill and the cross complainants.

The cause will be remanded to the chancery court for the execution of its decree.

NOTE

The above opinion of the State Supreme Court in the Church case is printed in full from a certified copy of said opinion for the benefit and information of our readers as thousands of people are anxiously waiting the full text of the final opinion delivered July 15 and filed July 16, 1927 The opinion begins on page two and continues on page three. Our readers will observe that the court reversed the decision of the Court of Appeals and confirmed the decision of the chancellor in its entirety, therefore, for the further information of our readers, we have printed the chancellor's final decree which appears on page four. It will be necessary to read them both in connection in order to obtain a comprehensive view of the status of the case at present. The reader will note that the original opinion of the chancellor does not appear in this issue, but only the decree that was written from and in harmony with the original opinion.

It is expected that this and much of the original pleadings and history of the case that appears on record will appear in booklet form and may be obtained at this office.—Ed.

NOTE—The reader will observe that the Supreme Court affirmed the decree of the chancellor in its entirety, therefore, we herewith submit the following opinion and decree of the chancellor in order that the reader may understand fully the final decision of the Supreme Court as above set out.

The reader will remember that the decision of the chancellor was reversed by the Court of Appeals and then the Supreme Court reversed the decision of the Court of Appeals and affirmed the decision of the chancellor in its entirety which is in favor of the Church of God and against A. J. Tomlinson and others, or in other words, against original defendents and cross complainants and in favor of the Church of God.

Opinion and Decree of Chancellor

CHURCH OF GOD, et als.

vs.

A. J. TOMLINSON, et als.

Number 1891

In the Chancery Court of Bradley County, Tennessee.

"Upon bill, amendments thereto, cross-bill, answers, demurrers, proof, exhibits and the whole record.

"The bill was filed to enjoin defendants, Tomlinson, et. al., from doing certain things to be in violation of complainants' rights to define the status and rights of certificate holders and provide for the payment thereof; to recover from defendants, Tomlinson, et. al., all sums of money that come to his hands for which he has not accounted, and by amendment for decree declaring complainants, owners of property involved free from claims of defendants: that complainants are the true and only original Church and by second amendment, that the complainants or church are voluntary association, etc.

"Defendants, Tomlinson and three others, answer and say complainants are not and do not represent the true church nor the assembly as originally intended; that they have departed from the true and original faith and practices and beliefs of the church, etc.; deny that A. J. Tomlinson has misappropriated any funds belonging to the church, or that he is indebted to complainants or the church in any amount.

"They deny misrepresentations, fraud or deceit; deny that they are in any way liable to certificate holders, but allege that the same are obligations against church property or property of assembly; admit that they have established a separate and distinct church or organization, which they aver is the true Church.

"The certificate holders answer and ask for decree, and that same be declared a lien on the property of complainants or against defendant, A. J. Tomlinson.

"A cross-bill, filed by numerous parties, claiming to represent certain of the congregations or churches—(not named or set out), and denying that complainants are the true church, neither are they authorized to represent the same, but that the complainants have departed from the true faith of the church and have organized a new faith and church and assembly; and pray for decree declaring that cross-complainants are the true church and for possession of the property; for monies received and rents against the cross-defendants; for damages, etc., and for cancellation of mortgage alleging that complainants had been removed and had withdrawn from the church.

"Cross defendants deny withdrawal from church or any changes in the tenets of teachings of the church, or the doctrines thereof; deny cross-complainants' right to possession of

property and deny all the allegations of cross-bill, and deny their right to maintain said cross-bill.

"There is a great volume of testimony. The storm center of the controversy is the constitution, which was adopted by the Assembly in 1921.

"The schism or factional differences I think was precipitated by the action of the assembly, in 1922, which relieved the overseer of the church of parts of his duties and selected an editor and publisher and a superintendent of education; accelerated perhaps by investigation of the accounts of A. J. Tomlinson, the former head of the church, and who had been receiving and disbursing the funds of the church and assembly.

"In the outset, it is well for it to be understood that we are not attempting to adjudicate the rights of any person to the religious belief or practice. Neither is this court to determine the truth or falsity of the doctrines promulgated by either of the parties.

"There is less difficulty when there is an avowed purpose to divert property to another denomination or to the support of a system of doctrines radically opposed to the characteristic and distinctive doctrines of the original church or society, than where there is a mere difference as to doctrines or policy. It is often a delicate, as well as a difficult question to determine whether the general principle laid down in Watson—Vs—Jones 13, Wall (U. S.) 679: (20 L. Ed. 666), governing civil courts in the determination of questions in relation to civil or property rights arising out of schisms or divisions within independent or congregational bodies or churches when no express trust is involved.

"The case of Mack vs. Kime, 129, Ga., 1, 24, L. R. A. (U. S.) 688, defines the dividing line between cases where the action of the majority is binding on civil courts, and cases where civil courts will interfere to prevent the diversion of property from implied trusts.

" 'If, says the court in that case, the question should arise as to what is the doctrine of the church, and the difference should be such as it is manifest there could be doubt as to what was the true doctrines, and the church tribunal constituted according to customs and usages of the church, should decide these differences, civil courts will not interfere with the judgment of this tribunal determining doctrinal differences between members of the congregation'."

"The courts of this country have never evinced a disposition to determine for religious bodies, ecclesiastical or doctrinal questions, and authority is abundant that civil courts have no power to determine such questions, and they will only invade that domain, and will only inquire into such questions, when it is necessary to determine property rights, and then only so far as necessary to determine those rights. Tennessee has given its adjudicature to this rule and doctrine.

"Was there a radical and fundamental departure from the characteristic doctrines of the church? I think that such change or departure must be fundamental; substantially, rather than radical.

"The bill is filed by the Church of God, a corporation—(by amendment, a voluntary association)—by the trustees of the general assembly: the board of elders of the Church of God —(provided for by the general assembly)—general secretary and the general assembly of the Churches of God.

"The trustees, the elders and the overseer are creatures, as well as representatives of the general assembly, and therefore represent the church as a whole, or the organized body which is representative of the church as a whole and the assembly, which is representative of the association of all the churches or the collective body of all the churches subscribing to that faith and participating in the form of government created and promulgated by said assembly.

The assembly according to the proof, interprets the Scripture for all

the churches of this creed. All the churchees could, and practically, if not all the churches of this denomination attended and participated in the deliberations of the assembly.

"This cause, I think, is easily distinguished from the cause of Scott vs. Tomlinson, et al., and the cause of Bain vs. Fairbanks, et al. Each of which were determined by court of civil appeals. In these causes the controversy was congregational and concerning property of a particular congregation of the Church of God; while in this case at bar the controversy broadens and involves the relation of the general assembly to all the churches collectively.

"'It is contended that the government of the church is theocratic, that each congregation rules, controls and governs its own affairs; that the power of the assembly is advisory only; that its authority is judicial and not legislative.

The court is of opinion that it must gather from the proof whether this is true, and must put its own construction and interpretation upon the acts of the assembly to determine whether it acts in a judicial or advisory capacity only.

"From the proof, and especially from the minutes of the assembly on file, the court is of opinion that the acts of the assembly teem with legislative proceedings and acts, and are pregnant with matters pertaining to church government. Tithing was discussed in the early assemblies, its teaching advised and at subsequent assemblies its observance became one of the rules of the church, as promulgated by the assembly; although the proof is that it was never enforced.

"Church government was often discussed; matters pertaining to the officers of the assembly; in fact, a general plan of government and church officials, as well as rules and practice for observation of commandments, was from time to time adopted by the assembly, when at the 1921 assembly the constitution was adopted as a culmination of former actions, edicts, recommendations, etc. It was then stated, and I am of opinion that at least by a greater majority there was no intention of a charge or deviation materially in the faith or creed of the church.

This constitution pertains in the largest measure to the government and not to the creed of the Church.

"It is not for the court to say whether a communicant would be subject to a change of faith and belief by a rule that tithes were obligatory rather than recommended, with the admonition that it was the Bible plan, but rather, I think it is the pertinent question, did the assembly have authority to adopt the same?

"The Constitution purports to 'Set fo th the teachings, principles and practices as heretofore interpreted by the General Assembly as further herein provided and for the general welfare of the membership, etc.'

"Its objects and purposes are stated to 'the propagation of the doctrines, principles and practices of the Church of God, as set forth in the New Testament, as interpreted by the legally authorized officials of this organization.' To promulgate rules and regulation to govern the local churches, etc., to search out the Bible plan of government and discipline and interpret same, to provide a general government in which is vested full power and authority to dictate and promulgate rules, etc., to govern the local churches composing said Assembly.

"These provisions are made to apply to the General Assembly and the constituted authority, the Assembly, adopted it in the usual way and manner without objection.—Was not the General Assembly, which is composed of local churches under the guidance of the Holy Spirit just as much so as if they had been in their local church? At any rate all the churches accepted it for more than a year, and even now as shown by the proof a very large number of the local churches still accept and operate un-

der it.

"Looking to the past history and proceedings of the Assembly and considering its organization and relation to the local churches I am of opinion that it was within its rights when it adopted the Constitution, which is more largely governmental.

"In so far as the doctrine of faith of the Church are concerned I do not think there is a radical or fundamental change made or such departure as would be required, especially so since I am of opinion that the Assembly had authority to adopt the Constitution.

"In Rouldin and Alexander, 15 Wall (U. S.) 131 (16 L. Ed. 69). It is said that withdrawal from a church, and uniting with another church, or denomination as a relinquishment of all rights in the church abandoned, etc.

"It is here shown and admitted that defendants, A. J. Tomlinson, et. al., have organized a new church or congregation, which I think is in effect a withdrawal from the original church, or that represented by complainants and I think from the proof of and all inference therefrom that cross complainants are in the same plight.

"The question was made in Hall vs. Hall 177 Ky. 430, that the petition in a suit by a faction of a church for a recovery of the property, etc., was insufficient because it did not aver that complainants and those whom they represented were members of the church at the time of the division and if they became members after that time they were estopped upon the ground that it was a departure from the faith and doctrine adhered to at the time of its organization. Especially if the defendants had been in possession of the Church property and in control of its affairs since the division so that without their action the petitioners could not have become members.

"In addition to the Tennessee cases and cases cited in briefs of counsel and argument the court has considered and applied the rule in Manning vs. Yeager, Ala. (1919) 82 So. 435 Winebrenner vs. Calder 43 Pa. 244, as well as cases cited above.

"If it is the belief and fundamental doctrine to tithe I can see no violence to the faith or creed to incorporate into the Constitution this doctrine since the Constitution is a promulgation of doctrines of the Church. There is no penalty for failure to comply and no compulsion in fact as the proof shows.

"It is referred to as man-made. It is contrived by man—by members of the church and assembly as all other matters pertaining to the government, policy and doctrines of the Church are promulgated by such men, and it is clear from the preamble that its purposes were to propagate and disseminate the doctrines according to the interpretations made by the Assembly and while the Assembly is called the General Assembly of the churches of God it is evident to my mind that it was to be merely a continuation of assemblies as theretofore held and participated in by the churches.

"The complainants have been and remained in possession of the church property, defendants and cross-complainants organized another assembly.

"Much is said of expulsions and removals and counter expulsion and removals. This court cannot review the action of the Church or organizations of the Church upon these matters. It is the universal rule of law that the action of a church in removing or expelling members is final so far as the courts are concerned, whether the same be legal and in persuasive to the Ecclesiastical way or policy of the church.

"The minutes of the assemblies point to the fact that it was necessary and expedient to organize for better work and dissemination of the Church's doctrines. The purposes are evident. It is in proof that some times ministers in one church taught a certain doctrine and another was taught by a minister in another church, creating confusion. It is common since

that if there is to be an assembly of all the churches that it must have some method of preserving a uniform creed or doctrine in order that the fundamental faith of the Church would be adhered to and taught to its communicants. This is the office the Assembly had been fulfilling and was intended to fulfill. Whether the Overseer was to be chosen for a term for life is a matter for that body to determine—as well as such offices as were necessary for the proper conduct of its business.

"The minutes and the Constitution provides for the orderly and proper method of change in the Constitution or any of the acts of the Assembly. All are the creatures of the Assembly and it may change, modify or amend them.

"The official assembly as provided for to give it the largest interpretation could only amend and since it sets with and at same time as the Assembly I think its prerogative is nor could be superior or paramount to the General Assembly. There is no question but that the General Assembly could by its action amend the whole matter.

"Under all the proof the court is of opinion that complainants are entitled to relief.

"The Charter is void for obvious reasons, but I do not think it necessary that this be alleged or proven to entitle complainants to recover.

"The injunction will remain in force and defendants will use some suffix or prefix to designate their church or organization and Assembly from that represented by complainants.

"The court is of opinion that as to relief against defendant Tomlinson, he should have credit for all sums used for the Church or any organizations in connections therewith, but I am of opinion that the accounts do not fully show this and for this reason the master will report upon this question, stating an account between the parties from all the proof and additional proof offered.

"The Certificate holders will have decree for the amounts due each respectively against Assembly and officers thereof in their capacity as such and to ascertain this the master will report as to the respective claims. Complainants will be empowered to sell or mortgage the property held by them for the payment of said certificates.

"Let the cross bill be dismissed with cost, incident to the cross bill.

"Other defendants will pay cost of the cause not otherwise adjudged."

Decree

CHURCH OF GOD et als

vs.

A. J. TOMLINSON, et als

Number 1891

In Chancery Court of Bradley County, Tennessee.

This cause came on for further and final hearing before the Honorable T. L. Stewart, Chancellor, holding the Chancery Court of Bradley County, Tennessee, on the 15th day of April, 1925, upon the original bill, the amended and supplemental bill, the answers of defendants, the judgments pro confesso heretofore entered; the cross bill of defendants and the an-

swer of the cross defendants thereto, the amendments of record to both the original bill and the cross bill, proof and exhibits and the whole record, from all of which the Court is of opinion that the original complainants are entitled to the redress sought and that cross complainants are not entitled to the relief sought under the cross bill.

It is therefore ORDERED, ADJUDGED and DECREED that said cross bill be dismissed, and the cross complainants and A. J. Lawson, Howard Lawson, C. B. Keeney, J. K. Miolin and Chas. L. Simmons, sureties on their bond for costs, will pay all costs incident to the cross bill, for which execution may issue.

The Court is of opinion, and therefore ADJUDGES and DECREES, that the organization calling itself the Church of God, and represented by F. J. Lee as General Overseer, and by M. S. Lemons, T. L. McLain, J. S. Llewellyn, J. B. Ellis and T. S. Payne as Trustees of the General Assembly thereof, and by M. S. Lemons, T. L. McLain, J. S. Llewellyn, J. B. Ellis, T. S. Payne, E Haynes, F. J. Lee, E. J. Boehmer, G. A. Fore, John Attey, S. W. Latimer, and A. Gann as the Board of Elders of the said Church, is the true and original Church of God, and as such is exclusively entitled to the name and properties of the said Church, and is entitled to the aid of the Courts in procuring and protecting the same.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that Defendants A. J. Tomlinson, A. J. Lawson, Homer Tomlinson, J. P. Hughes, George T. Brouayer, S. O. Gillespie C. T. Anderson, and all other defendants to this cause, and all other persons who are represented by any of the above named defendants or who are standing with and in like manner to any of said defendants, or are members of the same church or organization with said defendants, and all of their agents, representatives and fellow members are hereby expressly and perpetually enjoined from claiming or representing themselves to be connected in any way with the Church of God or any of the departments or allied organizations of said Church; from keeping and retaining any contribution or remittance of any kind sent to the Church of God; from receiving members into any church or organization upon the claim or representation that the same is the Church of God; from telling, printing, claiming or representing that the Complainants are not the Church of God and the true officers thereof; and from hindering, molesting, or in any way blocking or impeding the business and progress of the Complainant Church of God.

Defendants will be permitted to worship in such lawful manner as they see fit, provided only that they do not use the name of said Church or take other steps to make people believe that they are said Complainant church or do not undertake to procure or hold the properties thereof. Defendants will be permitted to adopt another and distinctive name, or may by adopting such suitable prefix or suffix as to avoid any confusion, use the name Church of God, but before so doing shall file in this Court notice of the name proposed to be adopted, giving complainants notice thereof, and procure the assent of the Court thereto.

As to the judgment sought against Defendant A. J. Tomlinson for an alleged shortage of the Church's funds, the Court is of opinion that said Tomlinson should be charged with all sums coming into his hands as the property of the church, and that he should be credited with all sums paid out by him for the church or any organizations in connection therewith; but the proof now before the Court is not sufficient for the Court to accurately arrive at the proper amount; and, this seeming to be a proper case therefor, this matter is referred to the Master to state an account be-

tween the parties from all the proof now on file and all additional proof offered by any of the parties.

The Court is of opinion that the defendants who are holders of the certificates of indebtedness are entitled to judgments thereon against the General Assembly of the Church and the officers thereof in their official capacity. It not appearing from the proof, however, as to who are the certificate holders and the exact amount due to each, this matter is also referred to the Master to hear proof, including any now on file, and report as to who are the holders of the said certificates and the exact amount due to each. The Complainant Trustees may, however, at any time sell or encumber any of the Church property and pay any or all of these or other valid indebtedness of the church without waiting for the coming in of the said report.

On account of the appeal of this case, hereinafter set forth, the Master may hold said references in abeyance pending the action of the appellate Courts on said appeal.

It is further ordered, ADJUDGED and DECREED by the Court that all defendants (except the certificate holders) will pay all costs of this cause, for which execution may issue.

Defendants and cross complainants duly excepted at the time to all of the foregoing actions and decree of the Court and prayed an appeal to the next term of the Court of Civil Appeals at Knoxville which is granted, upon defendants entering into bond for the payment of the costs of said appeal in the sum of seventeen hundred and fifty dollars which bond is filed.

The order heretofore made in this case requiring Complainants to render a monthly statement into the office of the Clerk and Master showing receipts and disbursements, is so modified as to require the complainants to render a statement every three months showing the total recepits and total disbursements, pending the appeal prayed in this cause, but said statement is not required to be itemized or in detail.

Upon motion of Complainants, it is ordered that the Chancellor's notes, or opinion, is made a part of the record and will be copied in and form a part of the transcript in this cause, in the event of an appeal.

It is agreed by the parties and accordingly so ordered by the Court, that all of the original exhibits filed in this cause be sent up with the transcript as part of the record in this cause and that the same need not be copied into the transcript in this case as to do so would cause great expense, trouble and labor unnecessarily.

For entry

T. L. Stewart, Chancellor.